

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
BLUEFIELD DIVISION

KARLA HIVELY, Individually and as Administratrix
of the ESTATE OF STEVEN HIVELY,

Plaintiff,

v.

USDC Civil Action No. 1:22-cv-00295
(Formerly McDowell County Circuit Court,
Civil Action No. 22-C-51)
E-file No. CC-27-2022-C-51

RAMACO RESOURCES, LLC,
A Kentucky Limited Liability Company,
RAMACO RESOURCES, INC.,
A Kentucky Corporation; and
TIMOTHY RANSON ADDAIR,
A West Virginia resident and citizen,

Defendants.

**NOTICE OF REMOVAL OF PROCEEDING FROM STATE COURT
(FROM MCDOWELL COUNTY CIRCUIT COURT, WEST VIRGINIA,
TO THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
WEST VIRGINIA (IN BLUEFIELD) BASED ON DIVERSITY JURISDICTION**

Now comes the Defendant, Timothy Ranson Addair, by counsel, Edgar A. Poe, Jr. and the law firm of Pullin Fowler Flanagan Brown & Poe, PLLC, and pursuant to 28 U.S.C. §§ 1441, 1332(a), and files this “Notice of Removal of Proceeding from State Court” and hereby gives notice of removal of this action from the Circuit Court of McDowell County, West Virginia, Civil Action No. 22-C-51 (E-file No. CC-27-2022-C-51), to the United States District Court for the Southern District of West Virginia, Bluefield Division, and in support hereby states as follows:

1. This civil action was commenced by the Plaintiff, Karla Hively, Individually and as Administratrix of the Estate of Steven Hively, as against the Defendant, on or about June 30,

2022, by filing a Complaint in the Circuit Court of McDowell County, West Virginia, designated Civil Action No. 22-C-51 (E-file No. CC-27-2022-C-51). See Complaint in Civil Action No. 22-C-51 (E-file No. CC-27-2022-C-51), attached hereto as Exhibit 1.

2. This Notice of Removal is being filed within thirty (30) days of the Defendant being served with the Complaint which is removable to the United States District Court for the Southern District of West Virginia.

3. Pursuant to 28 U.S.C. § 1441 “ any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.” 28 U.S.C. § 1441. In accordance with 28 U.S.C. § 1332(a), removal of any such action may be based on diversity of citizenship. In determining whether a civil action is subject to removal on the basis of diversity of citizenship under § 1332(a), a citizenship of any defendant sued under a fictitious name and/or sued but not properly joined as a defendant (fraudulent joinder) may be removed.

4. In the Complaint, the Plaintiff alleges that at all relevant times the Plaintiff, Karla Hively, and Plaintiff's decedent, Steven Hively, were residents and citizens of Barbour County, West Virginia. The Complaint alleges that the Defendant, Timothy Ranson Addair, was a resident of Avondale, McDowell County, West Virginia. The Complaint further alleges that the Defendant, Ramaco Resources, LLC, is chartered in Delaware. The Complaint also alleges that the Defendant, Ramaco Resources, Inc., is a Kentucky corporation.

5. This removal is based upon diversity jurisdiction. Should Plaintiff prevail in this action and recover attorney's fees and/or punitive damages, Plaintiff's claims of compensatory and punitive damages would likely exceed \$75,000.00.

6. Pursuant to 28 U.S.C. § 1391, venue is proper in the Southern District of West Virginia at Bluefield because a substantial part of the events or admissions giving rise to the claims contained in the Complaint allegedly occurred in this district, and McDowell County is situated in this district.

7. A removal of this action to this Court is also proper pursuant to 28 U.S.C. § 1446(b)(2)(A) as all Defendants have consented to removal. Specifically, all Defendants are represented by the undersigned and consent to removal. Attached as Exhibit 2 to this Removal is the written Consent of the unserved Defendants, Ramaco Resources, LLC, and Ramaco Resources, Inc.

8. Pursuant to 28 U.S.C. § 1446(d), prompt written notice of this Notice of Removal is being provided to Plaintiff's counsel and to the Clerk of the Court for the Circuit Court of McDowell County, West Virginia. A Notification of Removal to the Circuit Court is attached hereto as Exhibit 3.

9. Defendant, Timothy Ranson Addair contends that he is "fraudulently joined" to the Complaint of the Plaintiff simply for the purposes of defeating diversity jurisdiction. The Complaint of the Plaintiff alleges that at all times relevant, Timothy Ranson Addair, was acting within the scope of his employment for Ramaco Resources, LLC, and/or Ramaco Resources, Inc. as Superintendent of the Berwind Deep Mine operated in McDowell County, West Virginia. This Complaint makes no individual allegations of negligence or breach of duty as against the individual person, Timothy Ranson Addair. The Complaint alleges only a breach of duty that is properly alleged as against Ramaco Resources, LLC, and/or Ramaco Resources, Inc. and not against the individual, Timothy Ranson Addair.

10. In addition to the attached Exhibit 1, Complaint of the Plaintiff, attached Exhibit 2, Consent of the non-served Defendants, and attached Exhibit 3, the Notification of Removal to the

Circuit Court, this Defendant further attaches the file from the Circuit Court of McDowell County, as received, including the cover sheet with served parties, Summons, and Case Docket Entries as Exhibit 4.

WHEREFORE, the Defendant prays that the service and filing in this Court of this Notice of Removal and also the service upon the Plaintiffs and the filing in the Circuit Court of McDowell County, West Virginia, a “Notice to Plaintiff and Circuit Court of Notice of Filing of Removal” (which includes an attached copy of this Notice of Removal) shall effect the removal of this action from the Circuit Court of McDowell County, West Virginia, to the United States District Court for the Southern District of West Virginia, Bluefield Division.

TIMOTHY RANSON ADDAIR,
A West Virginia resident and citizen,

By Counsel,

Edgar A. Poe, Jr.

EDGAR A. POE, JR. (WVSB #2924)

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CERTIFICATE OF SERVICE

The undersigned counsel for Defendant does hereby certify on this 20th day of July, 2022, that a true copy of the foregoing “*Notice of Removal of Proceeding from State Court (From McDowell County Circuit Court, West Virginia), to the United States District Court for the Southern District of West Virginia (Bluefield) Based on Diversity Jurisdiction*” was served upon opposing counsel *via* the West Virginia E-filing System to the following:

D. Blake Carter, Jr.
Bailey Javins & Carter, LC
213 Hale Street
Charleston, WV 25301
Counsel for Plaintiff

Edgar A. Poe, Jr.
EDGAR A. POE, JR. (WVSB #2924)

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